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Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 169.

JOHN W. CLARK, PLAINTIFF IN ERROR,

vs.

LOUIS GERSTLEY AND WILLIAM GERSTLEY, SURVIVING PARTNERS OF THE FIRM TRADING AS ROSSKAM, GERSTLEY & COMPANY.

BRIEF FOR DEFENDANTS IN ERROR.

SIMON WOLF,
MYER COHEN,
EUGENE A. JONES,
Attorneys for Defendants in Error.

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Statement of the Case.

The plaintiff in error here was co-defendant in the Supreme Court of the District of Columbia, with the plaintiffs in error in the case of J. Charles McGuire and William McGuire against these defendants in error, said case being No. 168, this October term of this court, and has prosecuted a separate writ of error to review the judgment of the Court of Appeals affirming a judgment of the Supreme Court of the District of Columbia, sustaining a demurrer to all of the defendants' pleas.

The declaration is, of course, the identical declaration set forth in the Record No. 168. The plaintiff in error here filed seven separate pleas to said declaration (Rec., pp. 5–8, inc.). A comparison of the first six of these pleas with the six separate pleas of William McGuire, appearing

on pages 7 to 11, inclusive, Record No. 168, shows them to be identical therewith. As these pleas are fully discussed in the brief filed in that case, no further discussion is deemed necessary here. The plaintiff in error here filed, however, an additional plea (Rec., pp. 8 and 9). In this plea he claims that he has become discharged from all liability as surety on the bond because he was not notified of the default of the principals, and because the plaintiffs below "extended the time of payment for a valuable consideration" without the knowledge or consent of this plaintiff in error. A demurrer to this plea, as well as to all the others, was sustained, judgment was entered thereon by the Supreme Court of the District of Columbia, which judgment was affirmed by the Court of Appeals of the District of Columbia. As no error is assigned by counsel as to the ruling of the court below on this additional plea (see page 5, brief of plaintiff in error), we regard it unnecessary to do more than refer to the opinion of that court on this point (Rec., pp. 13 and 14).

Respectfully submitted.

SIMON WOLF,
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EUGENE A. JONES,
Attorneys for Defendants in Error.